Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Petition for Rulemaking of	)	RM-11303
Fibertech Networks, LLC	)	
	)	
	)	

COMMENTS OF SIGECOM, LLC

Sigecom, LLC ("Sigecom") hereby submits the following comments in support of the petition of Fibertech Networks, LLC ("Fibertech"), requesting the Commission adopt a set of "best practices" that address the need for improved competitor access to utility poles and conduits.

I. INTRODUCTION AND SUMMARY.

Sigecom is a Competitive Local Exchange Carrier, cable service provider and broadband service provider, offering facilities-based services in the Evansville, Indiana area. Sigecom is one of the few communications providers in the United States that has built a competitive facility-based network to serve businesses and residences throughout a metropolitan area. From the outset of planning and constructing its network, Sigecom has been faced with barriers that impede access to essential utility pole and conduit resources. The similarity of Sigecom's experience to that described by Fibertech is an indication that these are not isolated incidents, but rather pervasive obstacles to competition. Fibertech has effectively described an oppressive environment that is overly-burdensome to competition, and has recommended a number of "best practices" that will help to relieve the problem. Sigecom hopes that its own experiences, as

described in these comments, will help to reinforce Fibertech's request that the FCC institute a proceeding to embody the suggested "best practices" in the Commission's rules.

The Commission has correctly said in the past that pole attachments are crucial to the development of competition.[1] In Sigecom's experience, no pronouncement has ever been more true. For esthetic reasons, there is probably no local government jurisdiction in the United States that would permit the construction by competitive providers of redundant pole lines. Similarly, redundant conduit construction is very unpopular with both local governments and citizens, due to concerns about potential road surface damage and vehicle traffic disruption. In addition, bringing fiber optic cabling to residential neighborhoods has required construction in areas with low-to-medium population densities, and few such neighborhoods would provide the economic support for construction of a costly underground cable network by a non-monopoly carrier. Therefore, for the foreseeable future, the ability of telecommunications and cable television providers to efficiently utilize existing utility poles and conduit is an essential factor in the successful deployment of advanced communication networks and services.

II. DISCUSSION.

Sigecom supports the petition of Fibertech, which asks that the Commission adopt a series of "best practices" to facilitate pole and conduit access. As noted by Fibertech, its proposals already have been implemented by many utilities, and some even have been endorsed in the Commission's decisions. Accordingly, Sigecom makes the following statements in support of Fibertech's petition.

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[1] *See, e.g., In re Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments,* CS Docket No. 97-151, Report & Order, 13 FCC Rcd 6777, FCC 98-20, at ¶ 2 (rel. Feb. 6, 1998).

A. The Commission should require pole owners to permit use of boxing and extension arms in appropriate circumstances.

Sigecom agrees with Fibertech that boxing of poles and use of extension arms can be a reasonable means of adding capacity to utility poles. Fibertech suggests there should be three criteria for allowing boxing of poles and extension arms: (a) when they would render unnecessary a pole replacement or rearrangement of other carriers' facilities; (b) when facilities on the pole are accessible by ladder or bucket trucks; and (c) when the pole owner has previously allowed such techniques. Sigecom agrees with the first two criteria, but does not agree that boxing of poles and use of extension arms should be contingent on the pole owner having previously allowed such techniques. Accepted industry practice allows the use of pole boxing, as well as extension arms and standoff assemblies for the placement of additional cable with required clearances.[2] Sigecom recognizes that there are cases in which extension arms are not appropriate, such as when the pole is not accessible by a bucket truck and whenever a utility can show a valid safety, engineering or other practical reason why these practices should not be used in a specific case. While accepted industry practice, safety and generally accepted engineering guidelines take precedence, a pole owner should not be allowed to summarily dismiss the use of extension arms for the mere reason that "we've never done it before."

B. The Commission should establish shorter survey and make-ready time periods.

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[2] BLUE BOOK – MANUAL OF CONSTRUCTION PROCEDURES § 3.3 (Bellcore Communications Research, Inc., Special Report SR-1421, Issue 3, December 1998) (hereinafter, the "Bellcore Blue Book") (stating that use of standoff assemblies are an "optimal method of providing required clearance"). *Id.* The Bellcore Bluebook also uses diagrams of boxed poles in some of its depictions of acceptable clearances. *Id.* at Figures 3.1 and 3.4. Along with the National Electrical Safety Code ("NESC") and the National Electric Code ("NEC"), the Bellcore Blue Book is often cited in pole attachment agreements and tariffs as one of the established standards that must be adhered to by attaching parties.

Sigecom is presently involved in mediation, assisted by FCC staff, in which a principal issue in dispute between Sigecom and a pole owner is delay in conducting a pre-construction survey to determine the availability of pole facilities. Accordingly, Sigecom is in the position to confirm Fibertech's allegation that pole owners frequently do not meet the 45-day time frame set forth in the Commission's rules. Moreover, in Sigecom's experience, a single 45-day time limit is probably unreasonable for both pole owners and the attaching parties. As an example, Sigecom believes that a pole owner's review of a single application for attachments to 10 poles or less should be completed within 10 days. Exactly how many attachments a utility can be expected to review in a 45-day period is uncertain, but a graduated schedule of time frames would surely be fairer to both parties than a single 45-day time frame that is applicable, whether the application covers ten poles or ten thousand. There also might be benefit to both parties in consolidating the time limits for surveying, approving applications, and conducting make-ready work. It is Sigecom's belief that a reasonable time limit to complete survey and make-ready work for 750 poles should be 90 days. Sigecom has used that rule-of-thumb in submitting its pole attachment applications and scheduling its work processes.

C. The Commission should allow competitors to hire utility-approved contractors to perform field surveys and make-ready work.

Sigecom strongly agrees with Fibertech that pole owners should be required to engage in some form of pre-approval of contractors for make-ready surveys and make-ready work. Sigecom suggests that at least two options should be available to pole owners: (a) the utility should maintain its own list of contractors that an attaching party may hire for surveying and make-ready work, which list should always include at least three available contractors; or (b) pole owners should cooperate on a regional basis to develop an accreditation program for pole contractors. Either action should promote the interests of attaching parties to have as wide a

choice of contractors as possible, so as to promote competition and thereby contain the cost of pole surveys and make-ready work. The latter suggestion, that regional accreditation programs be established, would be highly desirable because it would be expected to produce a large number of qualified competing contractors. For those pole owners who would not allow accredited contractors to perform make ready work on their facilities, the accreditation alternative would still be practical for pole survey contractors, because pole surveys do not require contact with any facilities on a utility pole. Moreover, for pole surveys, there is less need than exists in the case of make ready work to focus on the particular utility's safety practices, union rules and the like. Also, Sigecom would expect pole owners to benefit from an accreditation program because it probably would improve the accuracy of survey reports, which Sigecom has found to be sorely lacking in the past. Attaching parties would benefit by having a large number of accredited survey contractors, who could be hired to expedite the necessary work at reasonable cost.

D. The Commission should require pole owners to allow installation of drop lines to satisfy customer service orders without prior licensing.

The issue of drop lines was addressed by the Cable Service Bureau in its 2000 decision in the *Mile High Cable* case, in which it stated that "drop poles are subject to notification requirements but not prior approval requirements separate from the approval of the attachment for which it is an adjunct."[3] The utilities with which Sigecom has pole attachment agreements have honored this rule. However, to the extent that some pole owners do not, as noted by

[3] *Mile Hi Cable Partners v. Public Service Co.*, PA 98-003, Order, 15 FCC Rcd. 11450 ¶ 20 (Cable Serv. Bur. 2000)

Fibertech, Sigecom agrees that licensing prior to installation should not be required in the case of drop lines.[4]

Arguments in favor of Fibertech's proposed drop line policy are two-fold: (a) the time lines for issuing licenses for primary routes are too long for drop lines; and (b) the risks to the pole owner of an improper attachment are less on drop service lines than on primary routes. Time frames for installation of drop lines are important for competitive reasons. In general, drop lines are closely associated with activating new subscribers' service. A service drop cable is more commonly installed to a particular building only after the first subscriber orders service. Competitive carriers focus their construction dollars on buildings where a customer order has been received. Therefore, once the customer has ordered service from a competitor, the installation interval becomes an urgent matter. Therefore, the ordinary time frames for licensing of pole attachments in large primary construction project are unreasonably long when applied to attachments to a drop line.

The risks to the pole owner of allowing attachments to drop poles without prior licensing are less than would occur in the case of "main line" installations. In Sigecom's experience, drop poles have fewer attachments, so they are less apt to be overloaded or have guying requirements. Fibertech proposes a rule in which the attaching party would notify the pole owner after making an attachment to a drop pole, and Sigecom supports that rule. Any pole attachment made improperly could then be corrected by the attaching party. The necessity of correcting improper attachments would deter haphazard work, and the avoidance of unauthorized attachment fees

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[4] Fibertech Petition at 23.

would provide incentive to report drop pole attachments in a timely manner, prior to discovery in a pole audit.[5]

E. The Commission should require pole owners to allow competitors to search utility records and survey manholes to determine availability of conduit, and limit charges if the utility performs these functions.

Many pole owners require that requests for access to its poles be accompanied by an access application form and a processing fee. At the same time, applicants for attachment are usually required to pay a fee for an office records review and field survey. The purpose of reviewing office records is to make a preliminary determination of whether or not structures are available in the areas requested by the attaching party. The field survey is intended to document pole and conduit locations, make a final determination that structures are available for attachments, assess loading and guying requirements, document the adequacy of clearances, and provide make-ready notes. The pole owner may also use this survey process to estimate the cost of make-ready work.[6]

The processes described in the preceding paragraph have produced many of the disagreements between pole owners and attaching parties. Typical problems have included violations of acceptable time frames, whereby the utility fails to complete these tasks within the 45 days allowed by the Commission's rules. The second common problem, as experienced by Sigecom, is that the fees charged by pole owners for these services exceed reasonable amounts. It is the opinion of Sigecom that one of the easiest methods of avoiding excessive survey fees and time frames is to allow attachers to review records and conduct surveys using their own

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[5] *See, generally, Mile Hi Cable Partners*, 15 FCC Rcd. 11450 at ¶¶ 19-20.

[6] SBC Communications Inc. is one of the few pole owners that provides a written process for attachment to its poles, and its practices conform generally with this description. *See* GUIDELINES FOR ACCESS TO SBC COMMUNICATIONS INC. AND OPERATING COMPANIES STRUCTURE/SBC-13STATE (SBC Communications Inc., May 13, 2003), available at http://asac.ameritech.com/guideline.asp at § 5.

independent contractors. Sigecom does not dispute that pole owners are entitled to recover their costs of having contractors work on their premises to conduct office record reviews, and of having utility employees review survey work for accuracy. However, as the Commission has said in the past, survey charges must be limited to the pole owner's actual costs.[7] In Sigecom's experience, some utilities continue to impose fixed up-front charges for surveys, calculated on a per-pole basis, in violation of the requirement.

F. The Commission should require incumbent local exchange carriers ("ILECS") to share building-entry conduit with competitive LECs and cable providers.

Building entry conduit is a crucial asset. In the experience of Sigecom, Fibertech makes an accurate statement when it says that "landlords are extremely reluctant to permit the drilling of additional holes in building foundations to accommodate new conduit."[8] Fibertech's proposed rule is reasonable and should be adopted by the Commission.

III. CONCLUSION.

Most pole and conduit structures were built many years ago by companies that were, at the time, monopolies or near-monopolies. In most areas, such structures are still controlled by just one or two utility companies. Those structures are now critically important to competitive carriers, but are often unavailable due to the unequal bargaining power that pole owners enjoy. Fibertech has effectively described an environment in which access problems for competitors continue, and Sigecom's Fibertech experience has been similar in many respects. Sigecom urges the Commission to initiate a rulemaking to adopt the "best practices" advocated by Fibertech.

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[7] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, Order on Reconsideration, 14 FCC Rcd. 18049 (rel. Oct. 26, 1999) at ¶ 107; *Cable Television Ass'n v. Georgia Power Co.*, PA 01-002, Order, 18 FCC Rcd. 16333 (Enforcement Bur. 2003)

[8] Fibertech Petition at 35.

Sigecom hopes that its own experiences, as described in these comments, will help to convince the Commission that such a rulemaking is required.

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CERTIFICATE OF SERVICE

I, J. Herbert Davis, do hereby certify that on this 27th day of January, 2006, I caused to be served a true and correct copy of the foregoing Comments of Sigecom, LLC by electronic filing or U.S. mail to the following:

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